

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2256

IN THE MATTER OF:

Served September 28, 1981

Application of DAWSON'S CHARTER)
SERVICE, INC., to Transfer)
Certificate No. 9 to BELTWAY)
LIMOUSINE SERVICE, INC., and for)
Approval of Temporary Control)

Case No. AP-81-21

DAWSON'S CHARTER SERVICE, INC. --)
Investigation to Determine the)
Status of Certificated Operations)

Case No. MP-81-10

Dawson's Charter Service, Inc., holds WMATC Certificate of Public Convenience and Necessity No. 9, issued March 29, 1979, which authorizes transportation by motor vehicle as follows:

PART A

IRREGULAR ROUTES:

Passengers, and mail, baggage and express, in the same vehicle with passengers:

CHARTER OPERATIONS,

From Dulles International Airport, Chantilly, Virginia, and points in the District of Columbia and Prince George's and Montgomery Counties, Maryland, to points in the Metropolitan District and return, restricted against transportation solely within the Commonwealth of Virginia.

PART B

REGULAR ROUTES:

Passengers and their baggage, and express and newspapers in the same vehicle with passengers between points in Washington, D. C., and Montgomery County, Maryland:

- (1) From junction Maryland Highway 28 and Maryland Highway 124, then over Maryland Highway 124 to Quince Orchard Road, then over Quince Orchard Road to Maryland Highway 355, then over Maryland Highway 355 to Montgomery Village Road, then over Montgomery Village Road to Stedwick Road, then over Stedwick Road to Montgomery Village Shopping Center roadways, then over Montgomery Village Shopping Center roadways to Centerway Road, then over Centerway Road to Montgomery Village Road, then over Montgomery Village Road to Interstate Highway 270, then over Interstate Highway 270 to Wisconsin Avenue (U.S. Highway 240), then over Wisconsin Avenue to the Maryland-District of Columbia line, and return over the same route.
- (2) From the Maryland-District of Columbia line over Wisconsin Avenue, N. W., to Massachusetts Avenue, then over Massachusetts Avenue to 20th Street, then over 20th Street to New Hampshire Avenue, then over New Hampshire Avenue to 21st Street, N. W., then over 21st Street to Pennsylvania Avenue, then over Pennsylvania Avenue to New York Avenue, then over New York Avenue to H Street, N. W., then over H Street to 13th Street, N. W., then over 13th Street to Pennsylvania Avenue, then over Pennsylvania Avenue to Constitution Avenue, then over Constitution Avenue to Louisiana Avenue, then over Louisiana Avenue to 1st Street, N. W., then over 1st Street to junction E Street, N. W., then over E Street to Bellevue Hotel, 15 E Street, N. W., Washington, D. C.
- (3) From Bellevue Hotel over E Street, N. W., to 1st Street, N. W., then over 1st Street to Louisiana Avenue, then over Louisiana Avenue to Constitution Avenue, then over Constitution Avenue to Pennsylvania Avenue, then over Pennsylvania Avenue to 12th Street, N. W., then over 12th Street to H Street, N. W., then over H Street to New York Avenue, then over New York Avenue to Pennsylvania Avenue, then over Pennsylvania Avenue to 22nd Street, N. W., then over 22nd Street to Massachusetts Avenue, then over Massachusetts Avenue to Wisconsin Avenue, then over Wisconsin Avenue to the District of Columbia-Maryland line.

JOINDER: Route (1) shall be joined with Route (2) for the purpose of providing through southbound service. Route (1) shall be joined with Route (3) for the purpose of providing through northbound service.

RESTRICTIONS: (a) Passengers may board and alight only at points on Maryland Highway 124, Quince Orchard Road, Montgomery Village Road and those points within the subdivision of Montgomery Village, Gaithersburg, Maryland; (b) Passengers may board at National Institutes of Health and those points south of National Institutes of Health located on Route (3) for northbound service only; and (c) Passengers may alight at National Institutes of Health and those points south of National Institutes of Health located on Route (2) for southbound service only.

On or about July 30, 1981, counsel for Dawson's Charter Service, Inc., orally notified the staff of the Commission that the carrier would cease to provide any service authorized by its certificate effective August 1, 1981, because the poor health of the carrier's president prevented further participation in the operations of the company. 1/

By application filed August 25, 1981, as supplemented on September 4, 1981, Dawson's seeks approval pursuant to Title II, Article XII, Section 12(b) of the Compact to transfer by sale Part A of its Certificate No. 9 to Beltway Limousine Service, Inc. (Beltway). 2/ In support of the application, the parties have submitted an executed bilateral contract of sale, a statement of transferee's financial condition, a copy of transferee's articles of incorporation and list of its current officers, directors and stockholders. As mandated by the Compact, Title II, Article XII, Section 12(b), a public hearing on this matter will be scheduled.

1/ By Order No. 2246, served July 31, 1981, U. S. Bus Lines, Inc., was granted temporary authority to conduct the regular-route operations authorized by Part B of Dawson's Certificate No. 9.

2/ Beltway holds Certificate of Public Convenience and Necessity No. 25 which authorizes (A) special operations, over irregular routes, limited to transportation by appointment only, between Dulles International Airport and Washington National Airport, on the one hand, and, on the other, 12 hotels and motels in Prince George's and Montgomery Counties, Md., and (B) charter operations between points in the Metropolitan District, restricted in (A) above to the performance of service in vehicles with a seating capacity of 12 to 15 passengers and in (B) above to the performance of service in vehicles having a manufacturer's designed seating capacity of 15 persons or less and conditioned in (B) above such that any charter operations from or to Dulles or National Airports must be related to a prearranged charter movement by the same party between at least two other points within the Metropolitan District.

Temporary approval for Beltway to operate Part A of Dawson's certificate is also sought. The Compact, Title II, Article XII, Section 12(d) authorizes the Commission to grant such temporary approval in its discretion and without hearings or other proceedings, for a period not exceeding 180 days, if it shall appear that failure to grant such approval may result in destruction of or injury to the property sought to be acquired or interfere substantially with its future usefulness in the performance of adequate and continuous service to the public. As stated in Order No. 2246, Dawson's ceased operations because of its president's poor health. Additionally, in its request for temporary approval, Beltway asserts that in the first six months of 1981 Dawson's provided charter service to at least 81 customers. 3/ Beltway states that it has entered into negotiations to purchase additional equipment, including buses, in order to provide the full level of service previously available from Dawson's. Continued cessation of such service, according to Beltway, would result in lost customers, injure the value of the operating rights to be acquired, and impair Beltway's ability to serve the public thereunder in the future.

It appears that Dawson's is unwilling to continue to render adequate service to the public whereas Beltway, presently operating in the Metropolitan District, is prepared to provide service under Part A of Certificate No. 9. Considering the quantum of service heretofore rendered by Dawson's and the harmful effects that would be engendered by a substantial interruption of such operations, we conclude that the statutory prerequisites for granting temporary approval have been met.

Beltway's Certificate No. 25 now restricts airport charter service as described in footnote 2, supra, 4/ and Certificate No. 9 contains partially duplicative (but unrestricted) authority to conduct charter operations to and from Dulles Airport. To preserve the existing limitations on charter service in vans to and from Dulles, an appropriate restriction will be imposed on the authority to be operated under the temporary approval granted herein. Neither the granting of temporary approval nor the restriction imposed on that grant raises any presumption as to the determination of the application filed under Title II, Article XII, Section 12(b) of the Compact.

3/ Of the 81 transportation invoices appended to Beltway's motion, it is noted that a few of the trips are to points outside the Commission's jurisdiction and three trips are from or to Dulles International Airport.

4/ The Commission originally imposed this restriction, limiting airport service in vans to that incidental to other charter movements between other points in the Metropolitan District, in Order No. 1647, served February 4, 1977. In so doing, we noted that, unlike area-wide van charter service, airport transfer service in vans was readily available.

Dawson's Certificate No. 9, like every certificate of public convenience and necessity issued by this Commission, requires that the holder thereof render reasonable, continuous and adequate service to the public in pursuance of the authority granted therein. Such an obligation is also imposed by Title II, Article XII, Section 3 of the Compact on all carriers serving the public pursuant to authority granted by this Commission. 5/

In addition to the "reasonable, continuous and adequate" service requirement of the Compact and the carrier's certificate, Title II, Article XII, Section 4(i) of the Compact provides that

[n]o carrier shall abandon any route specified in a certificate issued to such carrier under this section, unless such carrier is authorized to do so by an order issued by the Commission.

Pursuant to Title II, Article XII, Section 4(g) of the Compact, the Commission may, on its own initiative, after notice and hearing, suspend, change or revoke, in whole or in part, any certificate, for a carrier's wilful failure to comply with any lawful order, rule or regulation of the Commission, or with any term, condition or limitation of the carrier's certificate. Inasmuch as Dawson's appears to be in violation of the above-cited requirements of the Compact and Certificate No. 9, an appropriate investigation should be instituted. The public hearing on this matter shall be held concurrently with the hearing scheduled on Case No. AP-81-21.

THEREFORE, IT IS ORDERED:

1. That the application of Dawson's Charter Service, Inc., in Case No. AP-81-21 to transfer Part A of Certificate No. 9 is hereby scheduled for public hearing to commence Tuesday, October 27, 1981, at 9:30 a.m., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

2. That Beltway Limousine service, Inc., is hereby designated a co-applicant and made a party to this proceeding.

3. That Beltway Limousine Service, Inc., post notice of the application and hearing in the form prescribed by the staff of the Commission in each of its vehicles no later than Friday, October 2, 1981, the notice to remain continuously and conspicuously posted through the date of the hearing.

5/ "It shall be the duty of every carrier to furnish transportation subject to this Act and authorized by its certificate"

4. That Beltway Limousine Service, Inc., publish once in a newspaper of general circulation within the Metropolitan District, notice of this application and hearing in the form prescribed by the staff of the Commission, no later than Friday, October 2, 1981.

5. That Beltway Limousine service, Inc., produce at the hearing affidavits of said publication and posting.

6. That any person desiring to protest shall file a protest in accordance with Commission Rule No. 14, or any person desiring to be heard in this matter shall notify the Commission, in writing, no later than Monday, October 19, 1981, and mail a copy of such protest or notice to both counsel for Dawson's Charter Service, Inc., L. C. Major, Jr., Esquire, 6121 Lincolnia Road, Suite 400, Alexandria, Va. 22312, and counsel for Beltway Limousine Service, Inc., Steven W. Dimmick, Esquire, Stein, Miller & Brodsky, 910 - 17th Street, N. W., Washington, D. C. 20006.

7. That Beltway Limousine Service, Inc., is hereby assessed \$250 pursuant to the provisions of the Compact, Title II, Article XII, Section 19, and directed to deliver said amount to the office of the Commission, 1625 I Street, N. W., Suite 316, Washington, D. C. 20006, no later than 12 noon, Tuesday, October 20, 1981.

8. That Beltway Limousine Service, Inc., file with the Commission a statement of projected revenue and revenue deductions for a one-year period, no later than 12 noon, Tuesday, October 20, 1981, and serve a copy thereof on all parties of record as of Monday, October 19, 1981.

9. That Beltway Limousine Service, Inc., is hereby granted temporary approval to operate Part A of Certificate of Public Convenience and Necessity No. 9 issued to Dawson's Charter Service, Inc., subject to the terms, conditions and restrictions of said certificate, and further subject to the condition that, to the extent this approval confers duplicative operating rights regarding charter service to and from Dulles International Airport, such service, when provided in vehicles with a manufacturer's designed seating capacity of 15 persons or less, must be related to a prearranged charter movement by the same party between at least two other points within the Metropolitan District.

10. That Beltway Limousine Service, Inc., is hereby directed to file its WMATC Temporary Approval Tariff No. AP-81-21 within two days from the date of service of this Order.

11. That, subject to the acceptance of said Tariff by the Executive Director, the temporary approval granted herein shall be effective on the 3rd day following the date of service of this Order and shall continue in effect for 180 days through March 29, 1982, at 11:59 p.m., unless otherwise ordered by the Commission.

12. That Case No. MP-81-10 is hereby instituted pursuant to Title II, Article XII, Section 4(g) of the Compact for the purposes (a) of determining whether Dawson's Charter Service, Inc., is in compliance with the provisions of the Compact, including Title II, Article XII, Sections 3 and 4(i) thereof, its Certificate of Public Convenience and Necessity No. 9 and the rules, regulations and orders of the Commission, and (b) of determining whether said Certificate No. 9 should be revoked to the extent, if any, said carrier is found not to be in compliance.

13. That Dawson's Charter Service, Inc., is hereby made a party respondent to this proceeding.

14. That a public hearing on Case No. MP-81-10 is hereby scheduled to commence Tuesday, October 27, 1981, at 9:30 a.m., in the hearing room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

15. That Dawson's Charter Service, Inc., is hereby assessed the sum of \$250 to cover the costs which it is required to bear pursuant to Title II, Article XII, Section 19 of the Compact and is directed to deliver said sum to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006, no later than Tuesday, October 20, 1981.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:


GREGORY PAUL BARTH
Acting Executive Director